9 FAM 40.28 Notes

(TL:VISA-461; 09-11-2002)

9 FAM 40.28 N1 Money Laundering Ineligibility

(TL:VISA-461; 09-11-2002)

Section 212(a)(2)(I) of the Immigration and Nationality Act (INA) provides that an alien is inadmissible, and thus ineligible for a visa, if there is reason to believe the alien has engaged in, or seeks to enter the United States to engage in, money laundering, as defined in 18 U.S.C 1956 or 1957. It also provides that aiders, abettors, assistors, conspirators or colluders with money launderers are ineligible. Section 212(a)(2)(I) was added to the INA by Section 1006 of the USA Patriot Act, Public Law 107-56 of October 26, 2001.

9 FAM 40.28 N2 Mandatory Advisory Opinions

(TL:VISA-461; 09-11-2002)

a. *The two federal money laundering statutes on which INA 212(a)(2)(I) is based are complex and incorporate, by reference, a large number of other criminal statutes. Properly applying INA 212(a)(2)(I), therefore, requires a good understanding of the underlying criminal statutes, which may in some instances be outside the expertise of the adjudicating consular officer. In addition, the exact scope of INA 212(a)(2)(I) (and, in particular, its applicability to activities that occur solely outside the United States) is still being examined. For these reasons, posts must submit all cases involving potential INA 212(a)(2)(I) ineligibilities to CA/VO/L/A for an advisory opinion.*

b. The advisory opinion request should specify and/or describe the nature and location of the illegal activity that is believed to have been the source of the money laundering transaction(s) as well as the nature and location of the laundering transactions themselves. The mandatory advisory opinion requirement is applicable whether an alien applies for a visa or currently holds a valid visa, so long as the post believes that the alien may have engaged in or may intend to engage in money laundering activity. Any case that appears to involve criminal activity of the type described in U.S.C 1956 or 1957 should be referred to CA/VO/L/A, regardless of where the activity took place or whether there was any apparent U.S. nexus to the activity.

9 FAM 40.28 N3 Money Laundering Watch List

(TL:VISA-461; 09-11-2002)

The Patriot Act (10/26/01) also requires the Secretary of State in cooperation with the Attorney General, the Secretary of Treasury, and the Director of the Central Intelligence Agency, to develop within 90 days of enactment, and thereafter, maintain a money laundering Watch List, which identifies individuals worldwide who are known or suspected of money laundering. The Watch List must be readily accessible to and must be checked by a consular officer or other Federal official prior to issuance of a visa or admission of an alien to the United States. Pursuant to this requirement, relevant Washington agencies are providing names of known and suspected money launderers to the Department for addition into the CLASS Database under the appropriate code (ordinarily 00). (These entries will be in addition to CLASS entries made at the post level by consular personnel. See 9 FAM 40.28 N4 below.))

9 FAM 40.28 N4 Class Codes

(TL:VISA-461; 09-11-2002)

a. The Department has created two new Class Codes that consular posts are to use for this ineligibility:

(1) "21"—for cases in which Department has concurred in a visa refusal or visa revocation under INA 212(a)(2)(I), and

(2) "P21—for suspected money launderers who come to post's attention but who have not yet applied for U.S. visas and whose case has therefore not yet been referred to the Department.

b. As noted in 9 FAM 40.28 N3 above, the Department will also enter known and suspected money launderers into the CLASS system under the 00 code. As with any 00 entry, posts should send a VISAS DONKEY when encountering such a hit and must await a response from the Department before proceeding further.